

House of Representatives, March 26, 1998. The Committee on General Law reported through REP. FOX, 144th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING FAIRNESS AND DISCLOSURE OF GASOLINE PRICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16a-23 of the general
2 statutes is repealed and the following is
3 substituted in lieu thereof:

4 (a) No person engaged in the business of
5 refining petroleum into gasoline and furnishing
6 gasoline to retail distributors of gasoline for
7 sale to the public in this state shall fail to
8 furnish gasoline to independent retail
9 distributors of gasoline in this state, whether or
10 not franchised by such person, at wholesale prices
11 in reasonable quantities as long as he continues
12 to furnish gasoline to retail distributors of
13 gasoline in this state which are wholly owned by
14 him or operated under a franchise granted by him.

15 (b) It shall constitute, prima facie, a
16 violation of the provisions of subsection (a) of
17 this section for any such person (1) during any
18 calendar month beginning after July 1, 1973, to
19 deliver to independent retail distributors of
20 gasoline in this state a percentage of the total
21 gallons of gasoline delivered by him to all retail
22 distributors of gasoline in this state during that

23 month which is lower than the percentage of the
24 total gallons of gasoline delivered by him to all
25 retail distributors of gasoline in this state
26 during the period from July 1, 1971, to June 30,
27 1972, which was delivered by him to independent
28 retail distributors of gasoline in this state
29 during that period, or (2) to sell gasoline to
30 independent retail distributors of gasoline in
31 this state at a price during any such month which
32 is greater than (A) the average price at which he
33 sold gasoline to such distributors during the
34 period from July 1, 1971, to June 30, 1972,
35 increased by (B) a percentage equal to the
36 percentage by which the average price for gasoline
37 sold during that month to retail distributors of
38 gasoline which are wholly owned by, or operated
39 under a franchise granted by, that person exceeds
40 the average price for gasoline sold to such
41 distributors during the period from July 1, 1971,
42 to June 30, 1972.

43 (c) (1) DURING THE PERIOD COMMENCING ON
44 OCTOBER 1, 1998, AND ENDING ON OCTOBER 1, 2000,
45 ANY PERSON ENGAGED IN THE BUSINESS OF FURNISHING
46 GASOLINE TO RETAIL DISTRIBUTORS OF GASOLINE IN
47 THIS STATE MAY, SUBJECT TO THE REQUIREMENTS OF
48 THIS SUBDIVISION, USE A PRICING SYSTEM UNDER WHICH
49 THE WHOLESALE PRICE PAID FOR GASOLINE BY ANY SUCH
50 RETAIL DISTRIBUTOR IS DETERMINED BASED ON THE
51 LOCATION OF THE RETAIL DISTRIBUTOR IN ANY
52 GEOGRAPHIC PRICE ZONE IN THIS STATE AS MAY BE
53 ESTABLISHED BY SUCH PERSON. DURING SUCH PERIOD,
54 UNDER ANY SUCH ZONE PRICING SYSTEM, THE WHOLESALE
55 PRICE PAID TO SUCH PERSON FOR ANY GRADE OF
56 GASOLINE BY A RETAIL DISTRIBUTOR LOCATED IN ANY
57 SUCH GEOGRAPHIC PRICE ZONE SHALL NOT EXCEED, OR BE
58 LESS THAN, THE WHOLESALE PRICE CHARGED BY SUCH
59 PERSON FOR THE SAME GRADE OF GASOLINE TO ANY
60 RETAIL DISTRIBUTOR LOCATED IN ANY OTHER SUCH
61 GEOGRAPHIC PRICE ZONE, BY MORE THAN SIX CENTS PER
62 GALLON AS DETERMINED ON THE DATE OF THE SALE OF
63 SUCH GASOLINE. NOTHING IN THIS SUBDIVISION SHALL
64 BE CONSTRUED TO PROHIBIT DURING SUCH PERIOD ANY
65 OTHER FORM OF PRICING SYSTEM UNDER WHICH THE
66 WHOLESALE PRICE FOR GASOLINE PAID BY ANY SUCH
67 RETAIL DISTRIBUTOR IS BASED ON OR VARIES ACCORDING
68 TO THE GEOGRAPHIC LOCATION OF THE RETAIL
69 DISTRIBUTOR WITHIN THIS STATE, PROVIDED, DURING
70 SUCH PERIOD, NO SUCH PRICING SYSTEM MAY IMPOSE

71 WHOLESALE PRICES FOR GASOLINE IN ANY SUCH
72 GEOGRAPHIC LOCATION THAT DIFFER BY MORE THAN SIX
73 CENTS PER GALLON FROM THE WHOLESALE PRICES IMPOSED
74 UNDER SUCH PRICING SYSTEM IN ANY OTHER SUCH
75 GEOGRAPHIC LOCATIONS IN THIS STATE.

76 (2) NOT LATER THAN JANUARY 1, 2000, THE
77 SECRETARY OF THE OFFICE OF POLICY AND MANAGEMENT
78 SHALL SUBMIT A REPORT TO THE JOINT STANDING
79 COMMITTEE OF THE GENERAL ASSEMBLY HAVING
80 COGNIZANCE OF MATTERS RELATING TO CONSUMER
81 PROTECTION CONCERNING THE IMPACT OF SUBDIVISION
82 (1) OF THIS SUBSECTION ON RETAIL GASOLINE PRICES
83 IN THIS STATE AND ON THE BUSINESS OF RETAIL
84 DISTRIBUTORS IN THIS STATE. THE SECRETARY MAY MAKE
85 REASONABLE REQUESTS FOR INFORMATION TO ALL PERSONS
86 SUBJECT TO THE REQUIREMENTS OF SUBDIVISION (1) OF
87 THIS SUBSECTION AND ALL RETAIL DISTRIBUTORS IN
88 THIS STATE AS THE SECRETARY DEEMS NECESSARY TO
89 PREPARE THE REPORT REQUIRED BY THIS SUBDIVISION.
90 ANY PROPRIETARY INFORMATION OR TRADE SECRETS
91 OBTAINED BY THE SECRETARY FROM SUCH PERSONS OR
92 RETAIL DISTRIBUTORS PURSUANT TO ANY SUCH REQUEST
93 SHALL BE CONFIDENTIAL AND DISCLOSED ONLY TO THE
94 COMMITTEE.

95 [(c)] (d) A violation of the provisions of
96 subsection (a) OR SUBDIVISION (1) OF SUBSECTION
97 (c) of this section constitutes an unfair OR
98 DECEPTIVE trade practice [within the provisions of
99 chapter 735a] UNDER SUBSECTION (a) OF SECTION
100 42-110b.

101 Sec. 2. Section 42-133k of the general
102 statutes is repealed and the following is
103 substituted in lieu thereof:

104 For the purposes of sections 42-133j to
105 42-133n, inclusive, AS AMENDED BY THIS ACT:

106 (1) "Franchise" means any contract (A)
107 between a refiner and a distributor; (B) between a
108 refiner and a retailer; (C) between a distributor
109 and another distributor; or (D) between a
110 distributor and a retailer, under which a refiner
111 or distributor, as the case may be, authorizes or
112 permits a retailer or distributor to use, in
113 connection with the sale, consignment, or
114 distribution of motor fuel, a trademark, [which is
115 owned or controlled by such refiner or by a
116 refiner which supplies motor fuel to the
117 distributor which authorizes or permits such use.]

118 (2) "Franchise" includes, BUT IS NOT LIMITED
119 TO: (A) [any] ANY contract under which a retailer
120 or distributor, as the case may be, is authorized
121 or permitted to occupy leased marketing premises,
122 which premises are to be employed in connection
123 with the sale, consignment, or distribution of
124 motor fuel under a trademark which is owned or
125 controlled by such refiner or by a refiner which
126 supplies motor fuel to the distributor which
127 authorizes or permits such occupancy; (B) any
128 contract pertaining to the supply of motor fuel
129 which is to be sold, consigned or distributed (i)
130 under a trademark owned or controlled by a
131 refiner; or (ii) under a contract which has
132 existed continuously since May 15, 1973, and
133 pursuant to which, on May 15, 1973, motor fuel was
134 sold, consigned or distributed under a trademark
135 owned or controlled on such date by a refiner; and
136 (iii) the unexpired portion of any franchise, as
137 defined by the preceding provisions of this
138 [paragraph] SUBPARAGRAPH, which is transferred or
139 assigned as authorized by the provisions of such
140 franchise or by any applicable provision of state
141 law which permits such transfer or assignment
142 without regard to any provision of the franchise;
143 OR (C) ANY CONTRACT ENTERED INTO ON OR AFTER THE
144 EFFECTIVE DATE OF THIS ACT UNDER WHICH A RETAILER
145 SELLS GASOLINE UNDER A TRADEMARK.

146 (3) "Franchise relationship" means the
147 respective motor fuel marketing or distribution
148 obligations and responsibilities of a franchisor
149 and a franchisee which result from the marketing
150 of motor fuel under a franchise.

151 (4) "Franchisor" means a refiner or
152 distributor, as the case may be, who authorizes or
153 permits, under a franchise, a retailer or
154 distributor to use a trademark in connection with
155 the sale, consignment, or distribution of motor
156 fuel.

157 (5) "Franchisee" means a retailer or
158 distributor, as the case may be, who is authorized
159 or permitted, under a franchise, to use a
160 trademark in connection with the sale,
161 consignment, or distribution of motor fuel.

162 Sec. 3. Section 42-1331 of the general
163 statutes is repealed and the following is
164 substituted in lieu thereof:

165 (a) No franchisor shall, directly, or through
166 any officer, agent or employee, terminate, cancel
167 or fail to renew a franchise, except for good
168 cause shown which shall include, but not be
169 limited to the franchisee's refusal or failure to
170 comply substantially with any material and
171 reasonable obligation of the franchise agreement
172 except such obligations under subsection (e) of
173 this section or for the reasons stated in
174 subsection (d) of this section. The franchisor
175 shall give the franchisee written notice of such
176 termination, cancellation or intent not to renew,
177 at least sixty days in advance of such
178 termination, cancellation or failure to renew with
179 the cause stated thereon; provided, in the event
180 the franchisor elects not to renew a franchise
181 pursuant to subsection (d) of this section, the
182 franchisor shall give the franchisee written
183 notice of such intent not to renew at least six
184 months prior to the expiration of the current
185 franchise agreement. The provisions of this
186 section shall not apply (1) where the alleged
187 grounds are voluntary abandonment by the
188 franchisee of the franchise relationship, in which
189 event, such notice may be given fifteen days in
190 advance of such termination, cancellation or
191 failure to renew, or (2) where the alleged grounds
192 are the conviction of the franchisee in a court of
193 competent jurisdiction of an offense punishable by
194 a term of imprisonment in excess of one year and
195 directly related to the business conducted
196 pursuant to the franchise, in which event, such
197 notice may be given at any time following such
198 conviction and shall be effective upon delivery
199 and written receipt of such notice, subject to the
200 requirements of subdivision (10) of subsection (f)
201 of this section.

202 (b) Upon termination of any franchise for
203 [whatever] ANY cause or reason, except voluntary
204 relinquishment or abandonment of the franchise by
205 the franchisee, the franchisor shall fairly
206 compensate the franchisee or the franchisee's
207 estate for the fair market value, at the time of
208 termination of the franchise, of the franchisee's
209 inventory, supplies, equipment and furnishings
210 purchased by the franchisee from the franchisor or
211 its approved sources and good will, if any,
212 exclusive of personalized items which have no

213 value to the franchisor and inventory, supplies,
214 equipment and furnishings not reasonably required
215 in the conduct of the franchise business;
216 provided, [that] (1) compensation need not be made
217 to a franchisee for good will if [(1)] (A) the
218 franchisee has been given one year's notice of
219 nonrenewal, and [(2)] (B) the franchisor agrees in
220 writing not to enforce any covenant which
221 restrains the franchisee from competing with the
222 franchisor, and [provided further, that] (2) a
223 franchisor may offset against amounts owed to a
224 franchisee under this subsection any amount owed
225 by such franchisee to the franchisor.

226 (c) Notwithstanding the provisions of section
227 52-550, no franchise entered into or renewed on or
228 after October 1, 1973, whether oral or written,
229 shall be for a term of less than three years and
230 for successive terms of not less than three years
231 thereafter unless cancelled, terminated or not
232 renewed pursuant to subsections (a) and (d) of
233 this section.

234 (d) A franchisor may elect not to renew a
235 franchise which involves the lease by the
236 franchisor to the franchisee of real property and
237 improvement, in the event the franchisor (1) sells
238 or leases such real property and improvements to
239 other than a subsidiary or affiliate of the
240 franchisor for any use; or (2) sells or leases
241 such real property to a subsidiary or affiliate of
242 the franchisor, except such subsidiary or
243 affiliate shall not use such real property for the
244 operation of the same business of the franchisee;
245 or (3) converts such real property and
246 improvements to a use not covered by the franchise
247 agreement; or (4) has leased such real property
248 from a person not the franchisee and such lease
249 from such person is terminated or not renewed.

250 (e) No franchisor, DIRECTLY OR INDIRECTLY,
251 THROUGH ANY OFFICER, AGENT OR EMPLOYEE, shall:
252 [terminate, cancel or fail to renew a franchise
253 for the failure or refusal of the franchisee to do
254 any of the following: (1) Refusal] (1) REQUIRE A
255 FRANCHISEE to take part in promotional campaigns
256 of the franchisor's products; (2) [failure to meet
257 sales quotas suggested by the franchisor; (3)
258 refusal to sell] IN THE CASE OF ANY FRANCHISE
259 ENTERED INTO ON OR AFTER THE EFFECTIVE DATE OF
260 THIS ACT, MANDATE A SALES QUOTA OR A MINIMUM

261 GALLON PURCHASE QUOTA UNLESS THE AMOUNT OF ANY
262 SUCH QUOTA IS ESTABLISHED TO QUALIFY THE
263 FRANCHISEE FOR A LOWER PRICE PER GALLON CHARGED BY
264 THE FRANCHISOR OR TO REPAY THE FRANCHISOR FOR
265 FUNDS ADVANCED TO THE FRANCHISEE FOR CAPITAL
266 IMPROVEMENTS TO THE GASOLINE STATION FACILITIES;
267 (3) REQUIRE THE SALE OF any product at a price
268 suggested by the franchisor or supplier; (4)
269 [refusal to keep] REQUIRE the premises TO BE open
270 and operating during those hours which are
271 documented by the franchisee to be unprofitable to
272 the franchisee or to preclude franchisee from
273 establishing his own hours of operation beyond the
274 hour of 10:00 p.m. and prior to 6:00 a.m.,
275 PROVIDED THE FRANCHISOR MAY OFFER INCENTIVES, ON
276 EQUAL TERMS FOR ALL FRANCHISEES, TO OPEN FOR
277 ADDITIONAL HOURS; (5) [refusal to give] REQUIRE
278 DISCLOSURE TO the franchisor or supplier OF
279 financial records of the operation of the
280 franchise which are not related or necessary to
281 the franchisee's obligations under the franchise
282 agreement. Subdivisions (1) to (5), inclusive,
283 shall not be deemed material and reasonable
284 obligations, substantial failure to comply with
285 franchise terms, or good cause under subsection
286 (a) of this section.

287 (f) No franchisor, directly or indirectly,
288 through any officer, agent or employee, shall: [do
289 any of the following:] (1) Require a franchisee at
290 the time of entering into an agreement to assent
291 to a release, assignment, novation, waiver, or
292 estoppel which would relieve any person from
293 liability imposed by sections 42-133j to 42-133n,
294 inclusive, AS AMENDED BY THIS ACT; (2) prohibit,
295 directly or indirectly, the right of free
296 association among franchisees for any lawful
297 purpose OR, IN THE CASE OF ANY FRANCHISE ENTERED
298 INTO ON OR AFTER THE EFFECTIVE DATE OF THIS ACT,
299 PROHIBIT, DIRECTLY OR INDIRECTLY, THE DISCLOSURE
300 OF FRANCHISE CONTRACT TERMS AND CONDITIONS AMONG
301 FRANCHISEES, EXCEPT ANY INFORMATION THAT IS A
302 TRADE SECRET; (3) prohibit the transfer by will of
303 any franchise and the rights of any franchisee
304 under any franchise agreement to a spouse or child
305 of such franchisee; (4) require or prohibit any
306 change in management of any franchise unless such
307 requirement or prohibition of such change shall be
308 for good cause, which cause shall be stated in

309 writing by the franchisor; (5) impose unreasonable
310 standards of performance upon a franchisee, WHICH,
311 IN THE CASE OF ANY FRANCHISE ENTERED INTO ON OR
312 AFTER THE EFFECTIVE DATE OF THIS ACT, SHALL
313 INCLUDE, BUT NOT BE LIMITED TO, THE ESTABLISHMENT
314 OF A MINIMUM AMOUNT OF GALLONS TO BE SOLD OR
315 PURCHASED; (6) fail to deal in good faith with a
316 franchisee; (7) sell, rent or offer to sell to a
317 franchisee any product or service for more than a
318 fair and reasonable price; (8) impose on a
319 franchisee by contract, rule or regulation,
320 whether written or oral, any standard of conduct
321 unless the franchisor, his agents or
322 representatives sustain the burden of proving such
323 to be reasonable and necessary; (9) discriminate
324 between franchisees in the charges offered or made
325 for royalties, goods, services, equipment,
326 rentals, advertising services, or in any other
327 business dealing, unless (A) any such type of
328 discrimination between franchisees would be
329 necessary to allow a particular franchisee to
330 fairly meet competition in the open market or (B)
331 to the extent that the franchisor satisfies the
332 burden of proving that any classification of or
333 discrimination between franchisees is reasonable,
334 is based on franchises granted at materially
335 different times and such discrimination is
336 reasonably related to such difference in time or
337 on other proper and justifiable distinctions
338 considering the purposes of sections 42-133j to
339 42-133n, inclusive, AS AMENDED BY THIS ACT, and is
340 not arbitrary, [. Nothing] PROVIDED, NOTHING IN
341 THIS SUBDIVISION shall be construed [under this
342 subsection, however,] as granting to any
343 franchisor any right which may be limited by any
344 other state or federal statutes; (10) notify the
345 franchisee of a claimed breach of franchise
346 agreement for good cause later than one hundred
347 eighty days from the date [said] SUCH good cause
348 arises or one hundred eighty days after the
349 franchisor knew or in the exercise of reasonable
350 care should have known of [said] SUCH claimed good
351 cause; (11) IN THE CASE OF ANY FRANCHISE ENTERED
352 INTO ON OR AFTER THE EFFECTIVE DATE OF THIS ACT,
353 PROVIDE NOTICE OF CHANGES IN THE FRANCHISE
354 AGREEMENT LESS THAN ONE YEAR BEFORE THE EFFECTIVE
355 DATE OF THE AMENDMENT OR THE RENEWAL OF THE
356 FRANCHISE AGREEMENT.

357 (g) Any franchisee or franchisor, upon
358 request, shall have the right to have the question
359 of good cause submitted to arbitration in
360 accordance with the rules of the American
361 Arbitration Association. Any franchisee or
362 franchisor, upon the rendering of a decision in
363 arbitration, shall have the right to apply to the
364 superior court in the county [wherein] IN WHICH
365 such franchisee or franchisor is doing business or
366 resides for confirmation, modification, correction
367 or vacation of any arbitration decision.

368 (h) Every franchisor shall protect and save
369 harmless its franchisee from financial loss and
370 expense, including legal fees and costs, if any,
371 arising out of any claim, demand, suit or judgment
372 by reason of defect in merchandise or methods or
373 procedures prescribed by the franchisor and
374 performed by such franchisee, except for alleged
375 negligence or wilful misconduct of such
376 franchisee.

377 (i) Every franchisor shall reimburse its
378 franchisee at the prevailing retail price for any
379 services rendered or parts supplied by such
380 franchisee in satisfaction of any warranty issued
381 by such franchisor, and no franchisor shall
382 restrict a franchisee from rendering services or
383 providing parts in accordance with standards of
384 good workmanship in satisfaction of any such
385 warranty.

386 (j) Any waiver of the rights of a franchisee
387 under sections 42-133m, 42-133n, AS AMENDED BY
388 SECTION 4 OF THIS ACT, and this section which is
389 contained in any franchise agreement entered into
390 or amended on or after October 1, 1977, shall be
391 void.

392 Sec. 4. Section 42-133n of the general
393 statutes is repealed and the following is
394 substituted in lieu thereof:

395 (a) Any franchisee may bring an action for
396 violation of sections 42-133l or 42-133m, AS
397 AMENDED BY THIS ACT, in the Superior Court to
398 recover damages sustained by reason of such
399 violation, OR PUNITIVE DAMAGES IF SUCH VIOLATION
400 WAS WILFUL, which action shall be privileged in
401 respect to its assignment for trial and, where
402 appropriate, may apply for injunctive relief as
403 provided in chapter 916. Such franchisee, if

404 successful, shall be entitled to costs, including,
405 but not limited to, reasonable attorneys' fees.

406 (b) A final judgment, order or decree
407 [heretofore or hereafter] rendered against a
408 franchisor, in any civil, criminal or
409 administrative proceeding under any federal or
410 state act relating to antitrust laws or to
411 franchising, or sections 42-133j to 42-133n,
412 inclusive, AS AMENDED BY THIS ACT, shall be
413 regarded as and may be introduced as evidence
414 against such franchisor in any action brought by
415 any party against such franchisor under subsection
416 (a) of this section.

417 (c) The pendency of any civil, criminal or
418 administrative proceeding against a franchisor,
419 its agents or representatives, brought by federal
420 or state authorities or any of their respective
421 agencies under any federal or state act relating
422 to antitrust laws or to franchising, or under
423 sections 42-133l or 42-133m, AS AMENDED BY THIS
424 ACT, shall toll the limitation of any civil action
425 brought under sections 42-133j to 42-133n,
426 inclusive, AS AMENDED BY THIS ACT, if the action
427 hereunder is then instituted within one year after
428 the final judgment or order in such proceedings,
429 provided that said limitation of actions shall in
430 any case toll the law so long as there is actual
431 concealment on the part of any franchisor, its
432 agents or representatives.

433 (d) THE COMMISSIONER OF CONSUMER PROTECTION
434 MAY INVESTIGATE ANY VIOLATION OF SECTION 42-133l
435 OR 42-133m, AS AMENDED BY THIS ACT, AND, AFTER
436 NOTICE AND AN OPPORTUNITY FOR HEARING, MAY ASSESS
437 A CIVIL PENALTY OF NOT MORE THAN TEN THOUSAND
438 DOLLARS PER DAY PER VIOLATION. THE ATTORNEY
439 GENERAL MAY BRING AN ACTION IN SUPERIOR COURT TO
440 RECOVER ANY SUCH CIVIL PENALTY.

441 GL COMMITTEE VOTE: YEA 10 NAY 6 JFS

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5218

STATE IMPACT	See Explanation Below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Consumer Protection, Judicial Department, Office of the Attorney General

EXPLANATION OF ESTIMATES:

Under the Unfair Trade Practices Act, the Department of Consumer Protection has basically two methods for resolving complaints, 1) formal administrative hearings, or 2) forwarding the complaint to the Attorney General's office for litigation.

If most of the cases are handled administratively by DCP, a minimal workload increase is anticipated to result for the Office of the Attorney General which can be handled within the agency's anticipated budgetary resources.

In addition, to the extent that the individuals bring suits directly to court, a workload increase could result for the Judicial Department. The extent of the increase, if any, cannot be determined at this time, as it is contingent upon the number of suits that are filed under the Unfair Trade Practices Act.

Under the Unfair Trade Practices Act, civil penalties can be imposed for violations, thus, a revenue gain to the General Fund is anticipated. The extent of the additional revenue cannot be determined, as it would depend upon the number of violations which occurred and the amount of the penalties that are imposed.

It should be noted that if this bill is enacted, along with other minimal impact bills affecting the Department of Consumer Protection and the Attorney General's Office already passed and under consideration by the House and Senate - the total cost impact is estimated to be such that the agency could require additional funds to fully implement the legislative intent contained in the bills.

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OLR BILL ANALYSIS

sHB 5218

AN ACT CONCERNING FAIRNESS AND DISCLOSURE OF GASOLINE PRICES

SUMMARY: This bill prohibits, from October 1, 1998 to October 1, 2000, anyone distributing gasoline to retailers from using a pricing system that charges a retailer located in one geographic zone more than 6 cents more for a gallon than a retailer located in another zone for the same grade of gasoline on the same day.

The bill (1) applies the gasoline franchise law to more contracts between gasoline industry members, (2) revises the portion of the law that a federal court held was preempted by federal law, (3) prohibits franchisors from taking certain actions, (4) authorizes franchisees to sue for punitive damages, and (5) empowers the consumer protection commissioner to impose civil penalties of up to \$10,000 per day.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Price Zones

The bill allows wholesale distributors to establish geographic price zones only if they comply with the 6 cents limit on price variation. It provides that it is not to be construed as prohibiting any other pricing system in which the wholesale price is based on or varies according to geographic location if it complies with the price limit. A violation of the price zone

provision is an unfair trade practice.

The bill requires the secretary of the Office of Policy and Management to submit a report by January 1, 2000 to the General Law Committee on the bill's impact on retail gasoline prices and on gasoline retailers' businesses. It authorizes the secretary to make reasonable information requests to businesses subject to the price zone restriction and to retailers, as he deems necessary. Any proprietary information or trade secrets obtained by the secretary are deemed confidential and may be disclosed only to the committee.

Petroleum Product Franchises

The bill expands the definition of "franchise," which is the contract in which a refiner or distributor authorizes the use of a trademark in connection with the sale of motor fuel. A franchise may be between (1) a refiner and a distributor, (2) a refiner and a retailer, (3) two distributors, or (4) a distributor and a retailer. Under current law, the franchise law applies if the trademark is owned or controlled by the refiner entering the contract or by a refiner that supplies motor fuel to the distributor authorizing its use. The bill eliminates the requirement that the trademark be owned by a refiner and makes the franchise law apply to any contract entered on or after October 1, 1998 under which a retailer sells gasoline under a trademark.

Federal Preemption

In 1989, a federal court held that federal law preempted the part of Connecticut's franchise law that prohibits franchisors from terminating, canceling, or failing to renew a franchise if a franchisee refuses to remain open between 10:00 p.m. and 6:00 a.m. (see BACKGROUND). Connecticut also prohibits franchisors from taking these steps if a franchisee fails to (1) take part in a promotional campaign, (2) sell a product at a suggested price, (3) disclose to the franchisor financial records unrelated to the franchise obligations, or (4) meet a suggested quota. The bill, instead, prohibits franchisors, directly or indirectly, from requiring franchisees to do those things. Further, it revises the hours of operation and sales quota

provisions.

The bill modifies the hours of operation restriction by allowing franchisors to offer incentives for staying open additional hours, if they offer them on an equal basis to all franchisees. The sales quota provision prohibits franchisors from taking the above actions against a franchisee for failing to meet a suggested sales quota. The bill instead prohibits a franchisor from setting a sales quota or a minimum gallon purchase quota, unless the amount of the quota is set to qualify the franchisee for a lower price per gallon or to repay the franchisor for money loaned by the franchisor for capital improvements to the station. Both changes take effect with franchise agreements entered into on and after October 1, 1998.

Franchisor Prohibitions

The bill prohibits franchisors, beginning with franchise agreements entered into on and after October 1, 1998, from (1) prohibiting the disclosure of franchise terms and conditions among franchisees, except trade secrets, (2) imposing a minimum amount of gallons to be sold or purchased or (3) giving less than one year's notice before a change in a franchise agreement takes effect.

Enforcement

The law authorizes gasoline franchisees to sue in Superior Court to recover damages caused by a violation of the franchise law. The bill also authorizes suit for punitive damages if the violation was willful.

The bill authorizes the consumer protection commissioner to investigate violations of the gasoline franchise law and, after notice and hearing, to impose a civil penalty of up to \$10,000 per day per violation. It authorizes the attorney general to sue to recover the penalty.

BACKGROUND

Darling v. Mobil Oil (864 F.2d 981, 2nd Cir. (1989))

Mobil Oil took steps to terminate a franchise because the franchisee refused to stay open between the hours

of 10:00 p.m. and 6:00 a.m. The franchisee documented that it was unprofitable to stay open those hours and argued that Connecticut law prevented a gasoline franchisor from terminating a franchise for that reason. Mobil argued that federal law preempted state law.

The court examined the relationship between the two laws and the federal law's preemption provision. It wrote that a state law that makes provision for termination is preempted "only to the extent that the state law is not 'the same as' the corresponding federal act provisions." Using a line of reasoning that could be applied to all of CGS § 42-1331(e) (described above in the section on preemption), the court held that CGS § 42-1331(e)(4) is preempted because it conflicts with federal law. It noted that CGS § 42-1331(a), which also provides for franchise termination, is the same as the corresponding federal law because "the federal and state laws address identical subjects, apply identical tests and are not in conflict."

Connecticut Unfair Trade Practices Act

Under the Unfair Trade Practices Act, the consumer protection commissioner may investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, accept voluntary statements of compliance, and issue regulations defining what constitutes an unfair trade practice. The act also allows individuals to bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violating restraining orders.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute
Yea 10 Nay 6